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PERB CASE NO. LA-IM-235-M
FACTFINDER CASE NO. 17-06-05FF
File No. 17-03

FACTFINDING PROCEEDINGS PURSUANT TO
THE MEYERS-MILIAS-BROWN ACT

COUNTY OF KERN

and

KERN COUNTY DETENTION OFFICERS
ASSOCIATION

Issue: Proposed Transfer of Sheriff's Detentions Deputy
Control Room Duties to Sheriff's Aides

NEUTRAL FACTFINDING
PANEL CHAIR
RECOMMENDATIONS

August 20, 2017

FACTFINDING PANEL

Factfinder for the Union:

Howard A. Liberman
Managing Attorney
Mastagni Holstedt, APC

Factfinder for the County:

Shelly J. Castaneda
Deputy Chief
County Sheriff

Neutral Factfinder Panel Chair:

Renée Mayne
Arbitrator, Mediator

APPEARANCES

For the Union:

John H. Bakhit, Attorney
Mastagni Holstedt, APC

For the County

Che Johnson, Attorney
Liebert Cassidy Whitmore

INTRODUCTION

This factfinding arose due to an impasse in collective bargaining under the State of California Meyers-Milias-Brown Act Government Code §3505.4 between the Kern County Detention Officers Association (Union) and the County of Kern (Employer, County, Sheriff).

Under the procedures of the California Public Employment Relations Board (PERB), Renée Mayne was selected by the parties to serve as the Neutral Factfinder Panel Chair. The parties agreed all procedural requirements of the impasse had been met, and the impasse was properly before the Factfinding Panel to issue a recommendation to resolve the collective bargaining impasse.

The factfinding hearing was held on August 1, 2017, in a conference room at the County of Kern, Office of the County Administrator, 1115 Truxtun Avenue, Bakersfield, California. The parties had full opportunity to present and submit relevant exhibits and evidence, and to discuss and argue the issues in dispute. After the conclusion of the hearing, the factfinding record was officially closed and the dispute was deemed submitted for the Factfinding Panel's review and recommendations.

ISSUE AT IMPASSE

Per the Union's filing with PERB, the parties were at impasse over the County of Kern's proposal to the Kern County Detention Officers Association, to transfer control room duties currently performed by Sheriff's Detentions Deputies to 48 civilian Sheriff's Aides. (Union Tab 6; Employer Tab 3)

GOVERNING STATUTE

The Meyers-Milias-Brown Act Government Code §3505.4(d) sets forth the criteria to be used in the factfinding process.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations or ordinances.
- (3) Stipulations of the parties.

- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

FACTUAL BACKGROUND

The County of Kern proposed to the Kern County Detention Officers Association that control room duties currently performed by Sheriff's Detentions Deputies be transferred to 48 civilian Sheriff's Aides. The County proposal was intended to help reduce mandatory overtime for Detentions Deputies and reduce the County's structural budget deficit. The parties commenced negotiations on this proposal on or about January 23, 2017. (Employer Tab 3; Union Tab 5)

The Union had two objections to the County proposal: the safety of the Detentions Deputies with Sheriff's Aides responsible for monitoring inmate activity from control rooms, and the potential future loss of bargaining unit positions. On March 3, 2017, the Union declared an impasse with the County in its communication to the Board of Supervisors (Union Tab 6). Thereafter, the parties were certified to impasse by PERB. (Employer Tab 3)

The County proposal at the time of the impasse was to use the additional 48 Sheriff's Aides positions to augment the current detentions staffing allocation as non-inmate contact positions that would staff all Pretrial, Justice, Master and Receiving control rooms. (Union Tab

5) The job description for Sheriff's Aide, revision date August 1, 2013, includes monitoring inmate movement and activities within a detentions facility. (Employer Tab 6) Some regional and comparable detentions facilities' job descriptions for similar civilian positions also included monitoring inmate movement and activities in their duties. (Employer Tab 7)

The County proposal included a provision for an enhanced training program with substantially more hours of required training for Sheriff's Aides. Under the County proposal, as Sheriff's Aides were hired and trained, Sheriff's Detentions Deputies would be assigned to fill fixed posts and other vacancies currently filled by mandatory overtime. (Union Tab 5)

The Kern County Detentions Bureau had mandatory overtime in one form or another since 2005. On the date of the factfinding hearing, of 289 authorized Detentions Deputies positions, 254 were filled, and 35 were vacant. (Source: Sheriff's Lieutenant) To fill current vacancies, the Sheriff's Office will hold a paid Detentions Academy in January 2018, as previously planned. (Employer Tab 3) The County proposal would also provide a transition program to allow Sheriff's Aides to become Detentions Deputies.

The County proposal would not result in the deletion of current Detentions Deputy positions. (Employer Tab 3; Union Tab 5)

The parties stipulated in the hearing that the County salary and benefit savings under its proposal would be approximately \$1.8 million for a 12-month period once the plan was fully implemented.

POSITION OF THE UNION

The Kern County Detention Officers Association's primary objection to the County proposal is the staffing of the detention facilities' control rooms with civilian Sheriff's Aides. The Union expressed concern that this plan could result in the compromise of Sheriff's Detentions Deputies' safety. The Union said the Sheriff's Aides were not trained to detect

potentially dangerous inmate activity, and were also not subject to psychological exams at the time of hire, to determine their ability to monitor inmates from control rooms and effectively respond to incidents.

The Union said the inmate population in County detention facilities became more violent after the passage of California Assembly Bill 109 in 2011. They submitted evidence that showed how this legislation led to the transfer of certain inmates from state to county detention, and that increased the County inmate population with gang affiliations who committed crimes while serving lengthier time in detention. (Union Tabs 7-9)

The second objection the Union had with the County proposal was that, through the transfer of control room work from Detentions Deputy positions to civilian Aide positions, over the course of time, it could lead to fewer bargaining unit positions than the Union has.

The Union did not think the County proposal was primarily to reduce mandatory overtime, but was intended to save the County money. The Union documented the fact that in 2014, to help provide savings to the County, it had given up 12 Detentions Deputy positions for the County to hire 12 Sheriff's Aides. (Union Tab 3)

POSITION OF THE COUNTY

The County indicated that the primary reason for hiring 48 Sheriff's Aides is to reduce mandatory overtime for Sheriff's Detentions Deputies. The County said the secondary reason is to reduce the County's structural budget deficit. The County also wants to provide a transition program to allow Sheriff's Aides to become Detentions Deputies.

The Sheriff's Office had not been able to recruit and retain the requisite Detentions Deputies necessary to avoid mandatory overtime. The County said hiring 48 Sheriff's Aides to monitor control rooms would allow the Sheriff to assign Detentions Deputies to vacant fixed posts and other assignments that would reduce the mandatory overtime in the current staffing

model. The County submitted evidence that showed 5 regional and comparable detentions facilities' job descriptions for similar civilian positions included monitoring inmate movement and activities in their duties. (Employer Tab 7)

The Sheriff's Chief Deputy said she believed the Sheriff's Aides will be trained and qualified to effectively monitor the control room. She did not believe the Detentions Deputies will be subject to increased safety risk if Sheriff's Aides were monitoring inmates from control rooms. The Chief Deputy said because some of the inmate population were more violent since the passage of AB 109, moving Detentions Deputies from the control room to engage more in the prevention of inmate incidents was a better use of their abilities.

NEUTRAL FACTFINDING PANEL CHAIR DISCUSSION AND FINDINGS

The parties raised four major issues that must be addressed for them to reach an agreement on the issue at impasse. The County raised *Reducing Mandatory Overtime* and *County Cost Saving* and the Union raised *Safety Concerns* and *Erosion of the Bargaining Unit*.

Reducing Mandatory Overtime

The County as the employer has the management right to attempt to reduce mandatory overtime. Forced overtime can cause economic and personnel issues, including affecting the wellbeing of the Sheriff's Detentions Deputies. The Union concurred that mandatory overtime needed to be addressed. However, the Union objected to the County proposal and suggested increased wages would enhance recruitment and retention of qualified Sheriff's Detentions Deputies to fill vacant positions.

The Neutral Factfinding Panel Chair finds a wage increase was not considered in this factfinding proceeding because the County proposal and the Union's objections were the evidence provided by the parties as the scope of this factfinding.

County Cost Saving

The evidence presented by the County showed it has a structural budget deficit. The parties stipulated that the County proposal would save approximately \$1.8 million in the first 12 months of full implementation. As a County department, the Sheriff's Office has a responsibility to restructure operations when possible to more efficiently achieve required outcomes, while ensuring the safety of its employees.

It is not uncommon for public sector organizations to drive work downward within the ranks of an organization, to the extent it is feasible and the work can be adequately performed. The County proposal to replace Sheriff's Detentions Deputies in the control room with Sheriff's Aides will save County costs in salary and benefits.

The Neutral Factfinding Panel Chair finds the evidence provided by the County that showed 5 regional and comparable detentions facilities' use of similar civilian positions to monitor inmate movement and activities to be achievable in Kern County, under certain terms and limitations.

Safety Concerns

The Union's safety concerns are legitimate – as of the date of the factfinding hearing the County had not yet provided the Union specific information as to how the civilian Sheriff's Aides will be trained, to ensure they are competent to detect and report inmate activity that could harm Detentions Deputies. The Union has the right to request and receive information that will demonstrate to its members how the Sheriff's plan will adequately protect them.

The Neutral Factfinding Panel Chair finds the County should respond to the Union's safety concerns, and explain in detail how the Sheriff's Aides would be qualified after training to effectively perform the control room work and not increase risk to the Sheriff's Detentions

Deputies' safety. The Neutral Factfinding Panel Chair further finds the County should provide this safety information to the Union prior to the implementation of the Sheriff's plan.

Erosion of the Bargaining Unit

The Union's concern about the potential erosion of the bargaining unit is legitimate – the County proposal calls for filling, over time, Sheriff's Detentions Deputy control room duties with 48 Sheriff's Aides. The Union had previously agreed to give up 12 vacant Detentions Deputy positions for the Sheriff to fill with Aides. The Union has the right to attempt to protect the size of the bargaining unit. However, based upon the Sheriff's Aide job description, the County also has the right to transfer the monitoring of the control rooms to Sheriff's Aides. The County said it would not delete Detentions Deputies positions under its proposal and plan.

The Neutral Factfinding Panel Chair finds that the County could fill Sheriff's Detentions Deputy control room duties with 48 Sheriff's Aides while protecting the Detentions Deputy positions from layoff or deletion, thereby reducing mandatory overtime and the County's structural deficit but not eroding the size of the Sheriff's Detentions Deputy bargaining unit due to the transfer of work.

Neutral Factfinding Panel Chair Final Comments

Both parties made compelling arguments for their positions. The Neutral Factfinding Panel Chair concurs with the Union that it must have its safety concerns addressed and its bargaining unit positions protected. The Neutral Factfinding Panel Chair also concurs with the County that it is in the public's interest to reduce mandatory overtime and its structural budget deficit. The Neutral Factfinding Panel Chair's recommendations below are responsive to the parties' four major concerns to reach an agreement.

NEUTRAL FACTFINDING PANEL CHAIR RECOMMENDATIONS

The three-member Factfinding Panel deliberated and fully considered all the evidence presented by the parties in the factfinding hearing. The Panel members representing the Union and County have included their positions on these recommendations in their letters attached to this report.

It is the finding of the Neutral Factfinding Panel Chair that it is in the best interest of the parties and the public to resolve this impasse; therefore, the Neutral Panel Chair recommends:

1. The County proposed staffing plan dated February 24, 2017, to transfer Sheriff's Detentions Deputy control room duties to 48 Sheriff's Aides, shall be implemented subject to all the terms and limitations stated in Sections 2. and 3. below.
2. Prior to implementation of the proposed staffing plan, the County shall provide the Union an implementation plan that specifically addresses the Union's safety concerns, by detailing the safety training protocols the Sheriff's Aides assigned to the control rooms will receive. The Sheriff's Office and Union shall meet periodically, when requested by either party, to review the transition of Sheriff's Aides to control rooms and their safety training protocols, and any safety concerns raised by the Union.
3. The County and Union shall sign a side letter agreement that states the County shall not lay off or delete a Sheriff's Detentions Deputy position for so long as a Sheriff's Aide is staffing a control room.



Renée Mayne
Neutral Factfinding Panel Chair


Date

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August 17, 2017

Board of Supervisors of Kern County

Re: KCDOA Statement of Concurrence with Neutral Factfinders Recommendation

Dear Supervisors:

KCDOA agrees with the neutral factfinders report as we believe it is fair and reasonable in totality. While we do not want our members lives put at risk by improperly trained civilian employees manning control booths, the neutral factfinder ordered that our safety concerns and our concerns of erosion of our bargaining unit be addressed in recommendations 2 and 3. Should the Department reject either of these recommendations, let it be clear that KCDOA opposes the transfer of control booth work to Sheriff's Aides.

Sincerely,

MASTAGNI HOLSTEDT, APC

HOWARD A. LIBERMAN
Attorney at Law

HAL/ydm



1350 Norris Road
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August 18, 2017

Fact-Finding Hearing with the County of Kern
and the Kern County Detention Officers Association
Case No. LA-IM-235-M

County of Kern Representative to the Fact-Finding Panel
Shelly J. Castaneda
Chief Deputy
Kern County Sheriff's Office

Concurrence and Dissent to the Fact-Finding Report and Recommendations

As the representative for the County of Kern (County) to the Fact-Finding Panel, I agree with the first two advisory recommendations contained in the Fact-Finder's Report & Recommendations (Report), and I also respectfully disagree with the third advisory recommendation contained in the report. Accordingly, I am providing this separate concurring and dissenting opinion.

A. Concurrence

In general, I agree with most of the findings and recommendations contained in the Report. The Report correctly identifies the significant staffing challenges facing the County regarding Sheriff's Detention Deputy positions and the need for the County to assign qualified and trained Sheriff's Aides to control rooms duties. Additionally, the Report correctly identifies that the County's goal during these negotiations was to reach an agreement which would help reduce mandatory overtime for Detentions Deputies and also address the County's structural budget deficit. The information provided at the hearing established that the County's staffing plan is consistent with the County's current use of Sheriff's Aides throughout its facilities and is standard operating procedure with a vast majority of similar Counties. As such, I support the first two recommendations of the report, specifically that:

- 1) The County implement its proposed staffing plan dated February 24, 2017, to transfer Sheriff's Detentions Deputy control room duties to 48 Sheriff's Aides; and
- 2) That the County and the Association meet to discuss and address the safety concerns, by detailing the safety training protocols for the Sheriff's Aides assigned to the control rooms; and that the parties meet periodically to review the transition of Sheriff's Aides to

control rooms and their safety training protocols, and any safety concerns raised by the Association.

Both of these recommendations are consistent with the information provided during the hearing and overall goals of the County.

B. Dissent

However, I respectfully dissent from the Report's third recommendation which would prohibit the County from laying-off or eliminating any Detention Deputy position so long as Sheriff's Aides are assigned control room duties. While the County currently has no intent to eliminate Detention Deputy positions because of its proposed staffing plan, the County cannot categorically guarantee that the Department may not need to lay-off positions in the future. Because the third recommendation of the Report does not attempt to limit the duration of such a prohibition nor does it account for potential extenuating circumstance (such as facility closures), I cannot agree with the recommendation.

Further, I must dissent from the third recommendation because it limits the County's inherent ability to unilaterally lay-off employees. It is well established that the decision to lay-off positions is a non-negotiable, and fundamental management right. (*Fire Fighters Union, Local 1186, International Association of Fire Fighters, AFL-CIO v. City of Vallejo* (1974) 12 Cal.3d 608.) The Report's third recommendation places significant limitations on the County's ability to utilize this fundamental management right. The recommendation would essentially turn a non-negotiable right, into a negotiable right. Accordingly, I cannot agree to abdicate the County's management rights and therefore dissent from this third recommendation.

Over all, I support and appreciate the efforts of the Fact-Finding panel to attempt to reach advisory recommendations which could lead to agreement and avoid further impasse procedures.



Shelly J. Castaneda
Chief Deputy
Kern County Sheriff's Office

Date

08/18/17